

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell

Puget Sound Energy, Inc., <u>et al.</u>)	
Complainant,)	
)	
v.)	Docket No. EL01-10-007
)	
All Jurisdictional Sellers of Energy and/or)	
Capacity at Wholesale into Electric Energy)	
and/or Capacity Markets in the Pacific)	
Northwest, Including Parties to the Western)	
Systems Power Pool Agreement)	
Respondent.)	

ORDER ON CLARIFICATION

(Issued February 10, 2003)

1. In this order, we clarify our December 19, 2002 order addressing motions to reopen the evidentiary record in Docket No. EL01-10-000 et al.¹ This order provides all parties an opportunity to ensure that all relevant evidence is adduced in this proceeding, but also will bring closure and certainty to these proceedings (to sellers and customers alike) fairly and quickly.

Background

2. In the December 19 Order, the Commission, acting on motions to reopen the evidentiary record, allowed parties in the proceeding to conduct additional discovery for the period January 1, 2000 to June 20, 2001. We cautioned the parties against duplicating the discovery conducted in other Commission proceedings, but permitted submission of

¹ Puget Sound Energy, Inc., et al., 101 FERC ¶ 61,304 (2002) (December 19 Order).

evidence from those proceedings in their filings in this proceeding, to the extent relevant.² The December 19 Order also required that no later than February 28, 2003 the parties submit directly to the Commission additional evidence and propose new and/or modified findings of fact with specific citations to the record to support any proposed substantive recommendations. Parties were directed to provide relevant documents and citations to the record to support any proposed substantive recommendations.

Discussion

3. In the California refund proceeding, the Commission issued an order that allowed parties to conduct additional discovery and submit additional evidence directly to the Commission no later than February 28, 2003.³ In requests for rehearing, parties argued *inter alia* that the procedure for submission of adduced evidence established by the California Discovery Order violates the respondents' due process rights, as it does not provide for reply briefs or an opportunity to cross-examine adverse parties' witnesses. In an order being issued contemporaneous with this order, the Commission is granting rehearing in the California refund proceeding to afford parties in that proceeding the opportunity to respond to submissions made by adverse parties on February 28, 2003, and also provides parties with guidance on how to present additional evidence.

4. In light of our directives in the California refund proceeding, the Commission has determined that similar due process considerations apply to the Pacific Northwest Complaint proceeding. Accordingly, we clarify that, in the interests of due process, we will afford parties in this proceeding the opportunity to respond to submissions made by adverse parties on February 28, 2003. The parties will have until March 17, 2003 to file reply comments directly with the Commission. To the extent the parties believe that there is a need for cross-examination, the parties should so inform the Commission in their reply comments, and identify any disputed issues of material fact.

5. We also provide the parties in this proceeding guidance on how to present any additional evidence in an effort to ensure a thorough and expeditious review by the

²The Commission subsequently clarified that the use of the word "evidence" in the December 19 Order was meant to encompass all relevant material in other Commission dockets, and was not intended to refer to "admitted evidence" or otherwise limit the material that could be "transferred" from other proceedings. *Puget Sound Energy, Inc., et al.*, 102 FERC ¶ 61,113 (2003).

³*San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Serv., et al.*, 101 FERC ¶ 61, 186 (2002) (California Discovery Order).

Commission. The submissions due on February 28 must include testimony by sponsoring witnesses. The submissions due on March 17 need not include testimony. Submittals due on February 28 and March 17 must also include an executive summary explaining what findings of fact each indexed item addresses (see below for description of the index) and what it is intended to show. For each proposed finding there must be a cite, by index number, to the relevant evidence supporting the proposal. Parties must provide a clear explanation of what relief or action is requested based on specific references to information contained in the additional evidence. A template to be used for all executive summaries will be posted on the Commission's website later this week.

6. The submissions due on February 28 and March 17 should include an index of all relevant material contained in the filing for each affected proceeding. That is, an index of the material should be provided for the above-captioned proceeding, and a separate index should be provided for each other pending or proposed proceeding for which the filer claims its submission is relevant. Each index entry should consist of an exhibit number (party-specific and starting with "1") and include the abbreviated name of the submitter. The indices shall include (in this order): (1) whether the item contains privileged material; (2) the title of the document, author and date; (3) indicate the specific finding made or proposed and the case and docket number(s) it pertains to, and which time period is at issue (before October 2000; between October 2000 and June 2001; or after June 2001); (4) identify if the material is new additional material or if it is from an existing record with references to the existing record included; (5) an explanation of what the evidence purports to show; and (6) the name of the party or parties performing any alleged manipulation. A template to be used for all indices will be posted on the Commission's website later this week.

7. Electronic files must be submitted for each executive summary and index, using the Commission's eFiling system at www.ferc.gov.

8. Unless mutually agreed otherwise, complete sets of the filings submitted on February 28 must be served concurrently on all parties identified by the submitter as having performed the alleged manipulation at issue in the filing, except that privileged material may be withheld from any party that has not executed the applicable authorization(s) pursuant to the terms of a protective order. Unless mutually agreed otherwise, complete sets of the filings submitted on March 17 must be served concurrently on all parties having made the allegations at issue in the filing, except that privileged material may be withheld from any party that has not executed the applicable authorization(s) pursuant to the terms of a protective order.

9. Each exhibit submitted must have a cover page identifying: the exhibit number; the submitter; and whether the document contains privileged information.

10. For documents that do not contain privileged information, we encourage parties to use the Commission's eFiling system at www.ferc.gov, provided the submission meets the file size limitations (50 MB total) for that system. Select the filing type "Production of Document" after logging on to the system. If the eFiling system is not an option, then parties must file an original and two copies on either CD ROM or paper. For documents that contain privileged information, parties must file an original and two copies of both the complete (unredacted) and redacted versions of their submissions. The original and copies may be filed on either CD ROM or paper, with each version clearly marked "Non-Public" or "Redacted."

The Commission orders:

The December 19 Order is hereby clarified, as discussed in the body of this order.

By the Commission. Commissioner Brownell concurring with a separate statement
attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Puget Sound Energy, Inc., et al.

v.

Docket No. EL01-10-007

All Jurisdictional Sellers of Energy and/or
Capacity at Wholesale into Electric Energy
and/or Capacity Markets in the Pacific
Northwest, Including Parties to the Western
Systems Power Pool Agreement

(Issued February 10, 2003)

BROWNELL, Commissioner, concurring

1. For the reasons I stated in my dissent in Puget Sound Energy, Inc., et al., 101 FERC ¶ 61,304 at 62,221 (2002), I would not have reopened the record in this proceeding. However, given that the record has been reopened, and in the interest of ensuring due process for the respondents and an expeditious review by the Commission, I concur with today's order.

Nora Mead Brownell